

Identification of victims of trafficking in human beings in international protection and forced return procedures: Focussed Study of the German National Contact Point for the European Migration Network (EMN)

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Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

Empfohlene Zitierung / Suggested Citation:

Hoffmann, U. (2013). *Identification of victims of trafficking in human beings in international protection and forced return procedures: Focussed Study of the German National Contact Point for the European Migration Network (EMN)*. (Working Paper / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ), 56). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-67731-1>

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Federal Office
for Migration
and Refugees



Identification of victims of trafficking in human beings in international protection and forced return procedures

Focussed Study of the German National Contact Point
for the European Migration Network (EMN)

Working Paper 56

Ulrike Hoffmann



Co-financed by the
European Union



Identification of victims of trafficking in human beings in international protection and forced return procedures

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Ulrike Hoffmann

Federal Office for Migration and Refugees 2013

Abstract

This study focuses on the identification of victims of human trafficking from third countries in the asylum process and in the event of forced return, including general conditions under criminal, asylum and residence law. The study also highlights the administrative mechanisms for identifying victims used by the Federal Office for Migration and Refugees (BAMF), reception centres, detention facilities, the German Federal Police, foreigners authorities and counselling centres for victims of human trafficking. Finally, the study addresses the challenges in identifying victims and presents available statistics of human trafficking in Germany.

- The German Penal Code (StGB) addresses various types of human trafficking: for sexual exploitation (Section 232 StGB), for labour exploitation (Section 233 StGB), and for facilitating human trafficking (Section 233a StGB).
- The German residence law (AufenthG) provides for a reflection and stabilisation period of at least three months (Section 59, Subs. 7 AufenthG). Under Section 25, Subs. 4a AufenthG, residence law also allows for residence on humanitarian grounds for the duration of criminal proceedings. Subsidiary protection can also be ensured beyond the duration of criminal proceedings under Section 60, Subs. 2 AufenthG if the foreigner faces a tangible risk of torture or inhumane or degrading treatment or punishment in the country of origin.
- Furthermore, victims of human trafficking have access to statutory assistance under the Asylum Seekers' Benefits Act and to compensation under the Victims Compensation Act when certain requirements are met.
- The BAMF has taken a number of measures to identify victims of human trafficking, such as creating standard operating procedures and indicator lists for case officers. Special representatives for victims of human trafficking were also used and countless interdisciplinary training sessions conducted.
- Police and counselling centres are brought in early on suspected cases in order to guarantee adequate care for victims and initiate criminal proceedings against the perpetrators. Social workers working with these counselling centres also attend to victims of human trafficking in reception centres and detention facilities.
- Residence permits issued under Section 25, Subs. 4a AufenthG have increased slightly. Statistics also show that the majority of identified victims of human trafficking in international protection procedures are female, between the ages of 18 and 35. The primary countries of origin outside the EU are Nigeria, the Russian Federation, the Ukraine and India.

Contents

	Abstract	5
1	Introduction	10
2	Residence Permit, Protection Status and National Programme for Victims of Human Trafficking in the Member States	11
3	Detection, Identification and Referral of Victims of Human Trafficking during the Asylum Process	14
4	Detection, Identification and Referral of Victims in Case of Forced Return	22
5	Detection and Identification of Victims of Human Trafficking by Others Involved	25
6	Training	28
7	Statistics	31
8	Conclusion	35
9	References	37
	Abbreviations	41
	List of figures and tables	43
	Publications of the Research Section of the Federal Office	44

Contents

	Abstract	5
1	Introduction	10
2	Residence Permit, Protection Status and National Programme for Victims of Human Trafficking in the Member States	11
	2.1 Residence Permit for Victims of Human Trafficking	11
	2.2 Subsidiary Protection for Victims of Human Trafficking	12
	2.3 National Referral Mechanism	12
3	Detection, Identification and Referral of Victims of Human Trafficking during the Asylum Process	14
	3.1 Legal Basis	14
	3.2 Detection and Identification of Victims of Human Trafficking	15
	3.3 Access to Statutory Benefits and Compensation	18
	3.4 Detection, Identification and Transfer under the Dublin Procedure	20
	3.5 Planned Measures	21
4	Detection, Identification and Referral of Victims in Case of Forced Return	22
	4.1 Refusal of entry	22
	4.2 Removal	23
	4.3 Deportation	23
5	Detection and Identification of Victims of Human Trafficking by Others Involved	25
	5.1 Reception Centres	25
	5.2 Detention Facilities	25
	5.2 Counselling Centres	26
	5.4 Evaluation of Identification Measures	27

6	Training	28
7	Statistics	31
7.1	BKA's National Human Trafficking Situation Assessment	31
7.2	Data Collection by BAMF for Section 25 Subs. 4a AufenthG	32
8	Conclusion	35
9	References	37
	Abbreviations	41
	List of figures	43
	List of tables	43
	Publications of the Research Section of the Federal Office	44

1 Introduction

Human trafficking is a phenomenon with many facets. Alongside sexual exploitation, human trafficking occurs for the purpose of labour exploitation such as forced labour, slave-like domestic worker relationships, forced begging, and organ trafficking. In recent years, the topic of human trafficking has increased in significance, and was put on the political agenda both at European and national level. In the European Union (EU), there are currently two directives that address human trafficking: Directive 2004/81/EC¹ and Directive 2011/36/EU². The first directive introduced a reflection and stabilisation period as well as a residence title for victims of human trafficking for the duration of criminal proceedings against the perpetrators. Directive 2011/36/EU harmonises the criminal definition of human trafficking and sets forth measures to protect and support victims. The draft bill of the government (Deutscher Bundestag 2013a) was adopted in June 2013. As the Federal Council called on the conciliation committee on 20 September 2013, the legislative procedure could not be finalised (Bundesrat 2013). Therefore, in the just recently started election period a new procedure needs to be started.

This study ties in with the Directive 2011/36/EU and with the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (KOM 2012)³ by placing focus on identifying victims. This work is

Germany's contribution to a Europe-wide comparative study by the European Migration Network (EMN) titled 'Identification of victims of trafficking in human beings in international protection and forced return procedures'. This study specifically discusses the residence, asylum and penal framework for victims of human trafficking and highlights the administrative mechanisms for their identification in the asylum process, in reception centres, and detention facilities as well as in the event of forced return. In this respect, the study focuses on the reflection and stabilisation period and on temporary residence on humanitarian grounds under Section 25, Subs. 4a Residence Act (AufenthG)⁴. Due to the limited scope of the study, further protection forms are only briefly discussed. The study also determines the potential of counselling centres to identify victims of human trafficking. It further summarises the advanced training measures being taken by government authorities involved in identifying victims and highlights available statistics on the phenomenon of human trafficking in Germany.

1 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.

2 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (COM [2012] 286 final).

4 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory as announced on 25 February 2008 (BGBl. I S. 162) and last amended by Article 3 on 6 September 2013 (BGBl. I S. 3556).

2 Residence Permit, Protection Status and National Programme for Victims of Human Trafficking in the Member States

2.1 Residence Permit for Victims of Human Trafficking

The residence of victims of human trafficking is regulated in Germany by the Residence Act. Victims of human trafficking are granted a reflection and stabilisation period under Section 59, Subs. 7 AufenthG. This means that in case the Foreigners Authority (ABH) has clear evidence that the foreigner was a victim of human trafficking, it can set a reflection and stabilisation period deviating from the usual time limit for voluntary return. This period was increased to at least three months with the enactment of the Second Directive Implementation Act⁵ of 26 November 2011. During this time, the Foreigners Authority or an authority duly appointed by the Foreigners Authority informs the foreigner of the applicable regulations, programmes, and measures for victims of human trafficking. The reflection and stabilisation period provides victims of human trafficking the opportunity to acquaint themselves with their current situation, their rights and to reflect on the consequences of testifying against the perpetrators during preliminary proceedings. If this person decides to testify, she may be granted temporary residence on humanitarian grounds under Section 25, Subs. 4a AufenthG. This provision includes foreigners who have become victims of a crime under Sections 232, 233 or 233a German Penal Code (StGB). In addition to agreeing to testify, victims must

also temporarily remain in the Federal Republic for the duration of the criminal proceedings and sever all ties with the accused. Residence permits under Section 25, Subs. 4a AufenthG are issued for three-month intervals and may be extended if necessary (Section 26, Subs. 1, Sentence 3 AufenthG). Section 25, Subs. 4a AufenthG was introduced by the First Directive Implementation Act⁶ of 19 August 2007 in order to implement Directive 2004/81/EC.

Alongside the special residence permit for victims of human trafficking, German Residence Law offers further protection forms. Due to the limited scope of this study, they are only briefly highlighted. Section 25, Subs. 3 (in conjunction with Section 60, Subs. 7) AufenthG should be issued a residence permit and not be deported to another state in which a substantial concrete or individual danger to his or her life and limb or liberty applies. A foreigner who is enforceably required to leave the Federal territory may also be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future (Section 24, Subs. 5 AufenthG).

⁵ Act to Implement Residence Directives of the European Union and to Adapt National Legislation to the EU Visa Code as announced on 22 November 2011 (BGBl. I S. 2258 (Nr. 59)).

⁶ Act to Implement Residence and Asylum Directives of the European Union as announced on 19 August 2007 (BGBl. I S. 1970 (Nr. 42)).

2.2 Subsidiary Protection for Victims of Human Trafficking

Victims of human trafficking who decide not to testify in criminal proceedings are – provided that they retain no other right of residence – obligated to depart and must leave the Federal Territory. An exception to this is when the requirements set forth in Section 60, Subs. 2 AufenthG are met. According to this, a foreigner may not be deported to another state if said foreigner runs the tangible risk of torture or inhumane and/or degrading treatment or punishment. Beyond non-refoulement, the administrative courts (VG) of Würzburg and Wiesbaden ruled in two cases of human trafficking in favour of granting refugee status under Section 60, Subs. 1 AufenthG (VG Wiesbaden 2011; VG Würzburg 2005). According to Section 3, Subs. 1 and 4 Asylum Procedure Act (AsylVfG)⁷, in conjunction with Section 60, Subs. 1 AufenthG, refugee status must be granted if a foreigner cannot be deported to a state where his life or freedom is threatened based on his race, religion, nationality, membership in a certain social group, or political affiliation. In the aforementioned rulings, VG Würzburg and Wiesbaden both referred to Section 60, Subs. 1, Sentence 3 AufenthG. Under this, persecution based on membership in a certain social group can also occur ‘when the threat to life, physical integrity or freedom is tied solely to gender’. However, the connection to gender-specific persecution has not yet been reviewed by a higher court.

In March 2013, the German Bundestag’s Committee on Petitions lobbied for a general right to remain for victims of human trafficking from third countries. The committee based its proposal on the fact that human traffickers are only rarely convicted when their victims are unwilling to file a report or testify. At the same time, the threat of deportation – once criminal proceedings have ended – increases the likelihood that these crimes go unreported. The Committee on Petitions also referred to countries such as Italy and the United States, which already grant a permanent right to remain to victims of human trafficking who are willing to testify (Deutscher Bundestag 2013b). However, the committee’s proposal has not been included in a bill to combat human trafficking and to monitor

brothels that was submitted by the CDU/CSU and the FDP in June 2013 (Deutscher Bundestag 2013a).

2.3 National Referral Mechanism

According to Art. 11 (4) Directive 2011/36/EU, Germany has procedures for facilitating co-operation between involved agencies that contribute to the improved recognition, referral, and protection of victims of human trafficking. In conjunction with this study, the referral process refers to the transfer of potential victims of human trafficking, recognised during the asylum procedure or forced return, to criminal proceedings against the perpetrators. However, there is no nationwide, formalised national referral mechanism specifically for victims of human trafficking as provided by the European Commission in its EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (KOM 2012: 7).⁸ This is due the federal organisation of the law enforcement authorities.

In order to improve co-operation between the police and counselling centres specialising in psychosocial care for victims of human trafficking, the Federal and State Task Force on Trafficking in Women developed a co-operation concept in 1999. The concept, which has since been revised (BMFSFJ 2007a), is designed to offer adequate protection and aid to victims of human trafficking for sexual exploitation and is already in use in thirteen German Federal States. The co-operation concept clearly determines the roles of the police (investigation) and the counselling centres (consultation and support). More precisely, the police are responsible for determining whether or not a person is a victim and a witness, ensuring this person’s voluntary participation in criminal proceedings, and guaranteeing this person’s safety. The appropriate counselling centres must be involved early on in providing consultation on support options and in including victims in protection programmes. In addition, the counsellors should, when possible, be present during the interviews. They are also responsible for finding accommodation for victims and providing psychosocial support, finding education and training offers for integrative meas-

⁷ Asylum Procedure Act as announced on 2 September 2008 (BGBl. I S. 1798) and last amended by Article 4 on 22 November 2011 (BGBl. I S. 2258).

⁸ By the end of 2015 the Commission wants to conceptualise guidelines that define the role and responsibility of all aggrieved parties and create mechanisms for compensation and safe return. Furthermore, the Commission works on a EU-wide referral mechanism.

ures, and supporting return to the country of origin if necessary. Police and counselling centres pledge to mutually exchange information pertaining to criminal proceedings, safety aspects, and findings from counselling victims and to participate in joint interdisciplinary training.

In thirteen of the Federal States, co-operation declarations have been adopted – either in the form of agreements or decrees. In their co-operation declarations, the respective Federal States focussed on different aspects. However, they all refer to the co-operation concept of the Federal and State Task Force on Trafficking in Women. Currently the authorities also discuss the inclusion of the phenomenon of human trafficking for labour exploitation as well as special procedures for unaccompanied minors.

This kind of co-operation does not only exist between the police and counselling centres. In fact, the Federal Office for Migration and Refugees as well as the foreigners authorities and reception centres work closely with qualified counselling centres. Another possibility of exchange on tangible suspected cases and issues when subsidising benefits are round-table discussions, where representatives from state criminal police forces, ABHs, job centres, social services, and counselling centres meet at the local level.

3 Detection, Identification and Referral of Victims of Human Trafficking during the Asylum Process

3.1 Legal Basis

As part of a joint project of the BAMF, the International Organization for Migration (IOM), and the United Nations High Commissioner for Refugees (UNHCR) on the topic of ‘identifying and protecting victims of human trafficking in the asylum system’, recommendations for recognising and handling victims of human trafficking were drafted between 2011/2012 for asylum case officers (IOM et al. 2012) to call attention to human trafficking and provide support when interviewing victims of human trafficking and referring them to counselling centres.

The handbook defines human trafficking, according to the German Penal Code, as human trafficking

- for sexual exploitation (Section 232 StGB)
- for labour exploitation such as slavery, serfdom, debt bondage, or employment in unfair working conditions (Section 233 StGB).

According to EU Directive 2011/36/EU (Article 2 (3)) on preventing and combating trafficking in human beings and protecting its victims, a new edition of the handbook includes information on begging, exploiting knowledge of criminal acts, and organ removal.

The action recommendations also emphasise the importance of identifying victims both for their protection and for prosecuting the perpetrators. They also explain legal residence provisions such as the reflection and stabilisation period as well as residence

during criminal proceedings. They further allude to the enormous pressure human traffickers can exert on their victims. In order to adequately support presumed victims during the presentation of facts, case officers are required to inform the victims about counselling offered by the counselling centres and, if desired, to make contact accordingly. The recommendations also contain information on the possibility of suspending a hearing in order to contact a counselling centre and move the victim to a secure location if special protective measures are necessary (IOM et al. 2012: 107). Furthermore, the instructions contain a list of indicators that can provide the initial clues that the person in the hearing may potentially be a victim of human trafficking. These attributes are based on a list by the International Labour Organisation (ILO) of indicators of human trafficking for sexual as well as labour exploitation. The list differentiates between indicators for recruitment, exploitation and coercion (ILO 2009; see also Ch. 3.2). The action recommendations lastly contain a list of counselling centres and police stations to which case officers can turn if human trafficking is suspected (IOM et al. 2012: 108).

The handbook does not contain differentiated recommendations for handling children and adults or women and men. By law (Section 42, Subs. 3 Social Security Code (SGB) VIII), a legal guardian must be appointed for unaccompanied minors under 18 seeking asylum. This provision is referenced in the standing instructions for the asylum procedure. Failure to appoint a legal guardian by youth welfare services is documented accordingly. A hearing can only be held once a legal guardian has been appointed. Applica-

tions submitted by minors under 16 without a legal guardian are invalid. No record is created; however, youth welfare services are still required to appoint a legal guardian under Section 42, Subs. 3 SGB VIII. If the special case officer becomes convinced that the minor is under the age of 16 after the record has already been created (which, in practice, rarely happens), the application is then considered provisionally invalid. Following consent from a court-appointed legal guardian or from the applicant himself, once she turns 16, the application then becomes valid. Consent is retroactive to the time the application was filed (Section 108, Subs. 1, in conjunction with Section 184, Subs. 1 German Civil Code (BGB)).

Experienced interpreters are enlisted for hearings of unaccompanied minors and care is taken to create a relaxed atmosphere. Asylum procedures for unaccompanied minors are processed by special case officers who have received appropriate training to handle these persons sensitively and with empathy. Custodians from the youth centre may also be present during the hearing. Notification and instruction documents for asylum seekers also disclose that women and girls as well as parents with daughters have the right to select the gender of the person conducting the hearing and the interpreter (BAMF 2011: 11; BAMF 2012: 28; Parusel 2009).

3.2 Detection and Identification of Victims of Human Trafficking

Asylum case officers are educated on the phenomenon of human trafficking and its various forms through training aimed at expanding their skills and by means of the action recommendations (IOM et al. 2012, see also Ch. 3.1). The asylum applicant's statements during the hearing can be proactively evaluated for indications of human trafficking. Below there are the indicators that are important for the decision (IOM et al. 2012: 74).

General Indicators

Indicators of recruitment:

- Deception:
 - Chances of success of migration
 - Travel and recruitment conditions

- Type or location of labour
- Content or legality of labour contract
- Pay/income (retention of wage/money, debt bondage)
- Labour conditions (prostitution)
- Living situation and living conditions (isolation, confinement, supervision)
- Legality of documents or residence permit
- Laws and conduct of authorities

■ Exploitation:

- Irregular residence status (confiscation of identity papers)
- Difficult family situation
- Lack of knowledge (language skills)

■ Threats:

- Reporting to authorities
- Threatening/using violence (kidnapping, forced marriage, forced adoption, sale)
- Informing family, community, or the public
- Threatening/using violence against family members

Indicators of exploitation:

- Extremely long hours
- Poor living conditions/accommodation
- Very poor or hazardous labour conditions
- Little/no pay or wage manipulation
- Disregard for labour law/contract
- No social security (contract, social insurance)

Indicators of coercion:

- Difficulty living in a foreign environment or arranging travel independently
- Personal, family, or economic circumstances
- Complicated living conditions
- Relationship with authorities/legal status
- Confiscation of identity papers
- Debt bondage
- Isolation, confinement, supervision, violence
- Forcing perpetration of illegal/criminal activities
- Threatening to deteriorate labour conditions
- Dependency on exploiter/employer (economic, psychological, emotional)
- Exploitation of cultural/religious beliefs
- Work areas: prostitution, clubs, escorts' flats, escort services, agriculture, manufacturing, domestic service, services sector, care sector

Indicators specific to country of origin

In addition to the attributes of human trafficking that refer to recruitment, exploitation, and coercion, indicators specific to countries of origin need to be considered. These indicators are so far available for Nigeria, since an increasing number of victims of human trafficking from this country have been identified during the asylum procedure in recent years. During hearings on discovered human trafficking cases, the victims – exclusively female – reported that, in addition to male human traffickers, they were also frequently approached by women they referred to as ‘businesswomen’, ‘madams’ or ‘sisters’. Another indicator of human trafficking from Nigeria is the use of magic and sorcery (IOM et al. 2012: 26). Young women are frightened and made complacent through the use of all-powerful cults such as juju and voodoo. During rituals by these juju or voodoo priests, these women are promised lucrative jobs and secure residence in Europe or marriage to a European man. In return, the women must swear to obey their ‘sponsors’ in Europe, repay all costs incurred (often around Euro 50,000), and not attempt to contact the police. If they do not obey, they or their families are threatened with serious disease or even death (BKA 2010: 34–35). All case officers have been informed of the aforementioned attributes for human trafficking from Nigeria and can also refer to them during the hearing.

Self-reporting

In principle, victims also have the option of reporting themselves as victims of human trafficking. However, in practice this type of identification rarely occurs. The German NGO network against trafficking in women and violence against migrant women e.V. (KOK) cite the following reasons: first, a lack of language skills presents a high barrier for seeking help; second, there is fear of the police and asylum authorities, combined with the fear of being identified and deported; third, this fear is also stoked by the human traffickers, who purposefully describe German authorities as corrupt and untrustworthy. However, probably the greatest obstacle to self-reporting is the perpetrators themselves, who often exert extensive control over their victims, isolate them from the outside world, and possess such immense threat potential that it is difficult for the victims to free themselves from this inhuman situation. Serious psychological trauma and agonising

feelings of guilt often prevent victims of human trafficking from turning to the respective authorities (KOK 2013a). BAMF, IOM and UNHCR also state that victims of human trafficking often have no knowledge of their rights or of legal provisions and have had bad experiences in their countries of origin or in transit states with government authorities, especially the police. In addition, the pressure to provide for their families back in their countries of origin is so great that exploitation goes unreported, as it is the only opportunity to earn money (VG Würzburg 2005: 76).

Administrative process for identification during the asylum procedure

Generally, in order to identify victims of human trafficking, it is necessary to present all these facts pertaining to the problem of human trafficking during the initial procedure. Once the case officer notices during the personal hearing that there are indicators of possible human trafficking, she will gently – yet specifically – ask the applicant questions on this topic. The victim is also instructed on how important it is to present these facts during the initial procedure.

Should the applicant be aware during the initial procedure that she can prove she is a victim of human trafficking, yet has failed to state such, this information can, purely as a technicality, be rejected in subsequent procedures as having been presented too late. According to Section 51, Subs. 1, No. 1 Administrative Procedure Act (VwVfG),⁹ the factual and legal position must have changed in favour of the victim. It is also necessary for the applicant, not acting with gross negligence, to have been unable to assert the grounds for revisiting during the earlier procedure (Section 51, Subs. 2 and 3 VwVfG). This means that only new facts can be included in a subsequent procedure.

However, should victims of human trafficking be prohibited from being deported under Section 60, Subs. 2 AufenthaltG, it is acceptable for the facts regarding human trafficking to first be stated in the subsequent procedure, since the BAMF is required under Sections 51, Subs. 5, 48 or 49 VwVfG to determine at its own

⁹ Administrative Procedure Act as announced on 23 January 2003 (BGBl. I S. 102) and amended by Article 3 on 25 July 2013 (BGBl. I S. 2749).

discretion whether or not to reopen the procedure in the interest of preserving the legitimacy of the administrative action and withdraw or revoke the previous definitive decision (revisiting in a broader sense). In this respect, there exists a right to error-free execution of discretionary power. A discretionary decision is only error-free when the case officer/the BAMF, given that the existence of human trafficking was first presented in the subsequent procedure, conducts another procedure despite the fact that such presentation is technically impermissible (late under Section 51 VwVfG), and also reviews the grounds for justifying an alteration of the previous decision regarding Section 60, Subs. 2-7 AufenthG, in accordance with Section 49 VwVfG, regardless of the requirements set forth in Section 51, Subs. 1-3 VwVfG. In this respect, it is also possible for the indicators of human trafficking to first be reviewed during the subsequent procedure.

Evaluation and identification of victims of human trafficking during the asylum procedure

The identification of Nigerian victims of human trafficking for sexual exploitation was first evaluated in 2012 as part of a joint project by the IOM, UNHCR and BAMF. The BAMF made available 214 anonymised decisions from the asylum procedures of Nigerian applicants. The evaluation period was from November 2009 to September 2010. After excluding decisions pertaining to applicants from minors and men as well as decisions containing no information on the reasons for fleeing or for which the procedure was abandoned, a total of 164 decisions were available for analysis. Using the indicator lists of various organisations (ILO 2009; Interkultureller Rat in Deutschland e.V. 2012), the decisions were checked for the following indicators:

- Forced prostitution (control beyond time and location of work, earnings not at own disposal, forced illegal activity)
- Restriction of freedom of movement (constant supervision, escorting and surveillance; confinement, isolation)
- Threat and use of violence (signs of abuse, appears frightened, talks about own threats and intimidation as well as the environment's)

- Targeted committal (promises of work or marriage), assumption of travel costs, withholding or issuing of counterfeit identification documents
- Female human traffickers (reference to business women, madams, sisters)
- Inclusion in all-powerful cults (witchcraft, magic, juju, voodoo, through which control is exercised over victim or victim's family (IOM et al. 2012: 23–26))

The analysis showed that more than a third of the asylum decisions selected (53) showed indications of human trafficking for sexual exploitation. However, none of the cases indicated a right to asylum under Article 16a, Subs. 1 German Basic Law¹⁰ or refugee status under Section 60, Subs. 1 AufenthG. One applicant was granted subsidiary protection under Section 60, Subs. 2 AufenthG. In the latter case, the existence of human trafficking was recognised. However, unlike in the previously mentioned rulings by the VGs Wiesbaden and Würzburg, the grounds for persecution were not considered due to membership in a certain social group and refugee status was not granted. Four of the reviewed decisions contained indications that the issue of human trafficking and the corresponding grounds for risk were broached, and in four other cases, special case officers for gender-specific persecution were included in the assessment. However, these cases also did not meet the requirements for granting refugee status or subsidiary protection. A total of 52 asylum applications were denied on the grounds that the applicants' statements were implausible, unsubstantiated, incomprehensible, or too vague (IOM et al. 2012: 35–36).

The evaluation showed that the case officers in the reviewed instances were insufficiently aware of the indicators of human trafficking. This especially was coupled with the fact that the applicants only rarely indicated that they were victims of human trafficking. Some reports remained vague or even dubious. The study therefore points to the need for training in which case officers are specifically educated on the

¹⁰ Basic Law of the Federal Republic of Germany as revised and published in the Federal Law Gazette Pt. III, No. 100-1 and last amended by Art. 1 on 11 July 2012 (BGBl. I S. 1478)

characteristics of human trafficking – both general and country-specific. It is also necessary to dedicate enough time and resources for dealing with potential victims of human trafficking, and in particular to arrange and monitor contact with counselling centres that have trained social workers (IOM et al. 2012: 37). Appropriate measures were developed over the course of the joint project by IOM, UNHCR and BAMF on ‘identifying and protecting victims of human trafficking in the asylum system’ (see Ch. 3.1).

3.3 Access to Statutory Benefits and Compensation

Benefits under the Asylum Seekers’ Benefits Act

According to the Asylum Seekers’ Benefits Act (AsylbLG),¹¹ foreigners actually residing in the Federal Territory with a residence permit under Section 25, Subs. 4a AufenthG (for the duration of criminal proceedings against human traffickers) have a right to statutory benefits (Section 1, Subs. 1, No. 3 AsylbLG). Foreigners with an enforceable obligation to depart (reflection and stabilisation period) – even if the deportation order is not yet or no longer enforceable – are also eligible for benefits (Section 1, Subs. 1, No. 5 AsylbLG).

Victims of human trafficking with a temporary residence permit under Section 25, Subs. 4a AufenthG or those who fall under Section 59, Subs. 7 AufenthG have in particular the right to standard benefits such as food, housing, heating, clothing, sanitation and personal hygiene as well as household commodities and consumer items. Where possible, these are provided in the form of material benefits. Additionally, those eligible for benefits are entitled to payments to cover personal needs (Section 3 AsylbLG). In order to fulfil the requirements of the Federal Constitutional Court’s (BVerfG) ruling of 18 July 2012 (BVerfG 2013), the Federal States rely on Section 8 of the Minimum Require-

ments Determination Act¹² and grant adults up to Euro 354, and children and adolescents up to Euro 274.

According to Section 4, Subs. 1 AsylbLG, those entitled to benefits with acute illnesses and who are experiencing pain have the right to medical and dental treatment along with pharmaceuticals and bandaging. Under Section 4, Subs. 2 AsylbLG, expecting and new mothers receive access to medical and care-giving assistance as well as care, midwife assistance, pharmaceuticals, bandaging, and remedies. Medical care is ensured by the foreigners authority responsible for the foreigner (Section 4, Subs. 3 AsylbLG). Additionally, on a case-by-case basis, other benefits can be granted that are ‘essential to secure the means of subsistence or health, necessary to cover the special needs of children, or required to fulfil an administrative duty to co-operate’ (Section 6 AsylbLG).

In some instances, criminal proceedings for human trafficking require victims to remain in Germany for longer periods. In these cases – amongst others – access to the labour market effectively strengthens the personal stability of the victims. Under Section 25, Subs. 4a AufenthG foreigners authorities issue residence permits that also allow the holder to take up employment (Section 4, Subs. 2 and 3 AufenthG).¹³ Under German Social Security Code (SGB VIII), foreign children or adolescents entering Germany unaccompanied without neither a legal guardian nor custodian in the country are placed into the custody of youth welfare services. In this context, custody refers to temporary placement with a suitable individual, in a special establishment, or in another kind of supervised housing (Section 42 SGB VIII).

In terms of accommodation, there are victims who were already under the care of counselling centres before applying for asylum and are thus living in appropriate shelters. Asylum seekers who did not have any contact with counselling centres beforehand

11 The Law in Respect of Benefits for Asylum Seekers in the amended version dated 5 August 1997 (BGBl. I S. 2022) and most recently amended by Article 3 of the Law dated 22 November 2011 (BGBl. I S. 2258).

12 Regulation to Determine the Percentage Required to Update the Minimum Requirement Levels under Section 28a of the Twelfth Volume of the Social Security Code and to Expand the Annex to Section 28 of the Twelfth Volume of the Social Security Code for 2013.

13 Section 32 BeschV determines that foreigners who have a residence permit under international law or on humanitarian or political grounds can be issued a work permit that does not require approval from the Federal Employment Agency.

should, if possible, not be placed in initial reception centres, since this allows the perpetrators to find the victims (15a.1.2 and 15a.1.5.2 AVwV-AufenthG). The shelters arranged by some counselling centres are not even known to the police and offer, in addition to increased security, 24-hour counselling by social workers in order to remove newcomers from the influence of the perpetrators. However, only few counselling centres are able to provide this kind of special accommodation. Another problem lies in the nationwide distribution of the applicants. In order to evenly and fairly distribute the burden associated with hosting asylum seekers, they are divided amongst the Federal States (according to tax revenue and population; see also Müller 2013: 18–19). Often, counselling centres cannot provide accommodation elsewhere, so the victims of human trafficking are often placed in initial reception or refugee centres that possibly do not provide adequate security (BAMF 2011: 13, 19, 20). The KOK also reports problems in the practice of providing emergency medical care. Some physicians are reported to refuse to treat victims who are subsidised under the AsylbLG. In addition, it appears some urgently needed treatments are not being approved. Even the amount of money provided by the AsylbLG is insufficient to cover the enormous costs of the constant care provided by counselling centres. It has also been criticised that the Asylum Seekers' Benefits Act makes it impossible to take part in society and neither training, other integration measures nor travel and interpreters can be financed by the AsylbLG (KOK 2011: 213–214).

Access to Compensation under Victim Compensation Act

Generally, even victims of human trafficking who are not German nationals have a right to compensation under the Victim Compensation Act (OEG)¹⁴ if they become victims of a violent act in Germany. However, residence status in Germany does affect the type and extent of benefits. Under the OEG (Section 1, Subs. 5 Sentence 2), residence is considered legal when deportation is prohibited on legal or factual grounds, or out

of significant public interest. Third-country nationals undergoing the asylum procedure can become eligible under the OEG. Once residence becomes legal in terms of rights to services (e.g. once deportation is prohibited on humanitarian grounds), benefits may be requested under the OEG (Deutsches Institut für Menschenrechte 2013a: 26). The length of residence also affects the extent of benefits, with aggrieved third-country nationals who have legally resided in the Federal Republic for at most six months only receiving a one-time hardship benefit payment. Residence from six months up to three years makes a foreigner eligible for income-based benefits. Aggrieved third-country nationals who have been legally residing in the Federal Territory for more than three years receive the same benefits as German victims of violence. The benefits provided under the OEG consist of medical treatment, injury pension and care benefits, survivor's pension and social welfare benefits such as workforce participation, educational grants, livelihood assistance, or recovery and housing (BMFSFJ 2007c: 9).

The pension office is responsible for reviewing the right to and extent of benefits under the OEG. This review requires the victim's application, the files from the public prosecutor's office and/or the police (if criminal proceedings are pending), medical documents/reports, eyewitness accounts (if no criminal proceedings were conducted), and, if necessary, the victim's statement. The process concludes with an administrative decision that can serve as a legal remedy (and may be appealed). The following problems can arise for victims of human trafficking during this administrative procedure: insufficient communication between pension office, attorney's office, and the counselling centre caring for the victim; long waiting periods (one to three years, during which the victim may already have returned to her country of origin); poor co-ordination between authorities on how to proceed with at-risk victims; lack of linguistic support during the process and insufficient funding for interpreters; and the risk of re-traumatisation if the victim's statement is needed (BMFSFJ 2007c: 11–21). The BMFSFJ also points out that social services often do not grant psychotherapy to applicants whose deportation is prohibited. The reason for this, the BMFSFJ states, is the general principle that psychotherapy is a benefit that statutory health insurance companies are only obligated to provide to their policyholders. Nevertheless, victims of violent acts also have a right

14 Victim Compensation Act as announced on 7 July 1985 (BGBl. I S. 1) and last amended by Article 3 on 20 July 2011 (BGBl. I S. 1114).

to psychotherapy under the OEG, yet this still comes with an enormous need for scrutiny by the respective social welfare offices (BMFSFJ 2007c: 23). The KOK also emphasises that it is seldom possible for victims of violent acts who suffer from psychological problems to prove that these issues were caused by the act of violence. It is difficult to determine whether the act of violence, other circumstances or prior illness are the cause of the current problems (KOK 2012: 11; 2013c: 13). Not even the circular released by the Federal Ministry of Labour and Social Affairs on 6 May 2006 (see BMFSFJ 2007c: 35–36), which introduces the supposition of correlation, could not fully resolve the problem of causality.¹⁵

Administrative process for referring victims of human trafficking

The Federal States' general administrative regulations for the Residence Act set forth that foreigners legally residing in the federal territory do not legally require a residence title under Section 25, Subs. 4a AufenthG. As interpreted by the BAMF, this means that, in the instances in which it is determined during the asylum procedure that the foreigner is a victim of human trafficking, she would be eligible for a residence title under Section 25, Subs. 4a AufenthG, given that certain requirements are met. However, due to the fact that the foreigner already has approval to stay in order to go through the asylum process (Section 55 AsylVfG) and will thus be legally residing in the Federal Territory until the procedure is completed, it is not (yet) required. Only once the asylum procedure has been completed/ the approval to stay has expired (Section 67 AsylVfG), a residence permit can be issued if criminal proceedings are still pending.

The asylum procedure, which is an administrative procedure, must generally be separated from the police investigation and the criminal proceedings, although criminal law theoretically is a part of public law. The two procedures are not linked or tied together and are performed independently of one another. For privacy reasons, the asylum seeker's file is not shared with anyone except for with the administrative courts and legal counsels. However, the applicant is allowed to provide the hearing minutes to other agencies.

3.4 Detection, Identification and Transfer under the Dublin Procedure

The Federal Office for Migration and Refugees is responsible for steering the Dublin procedure.¹⁶ According to the BAMF, there are no known instances in which persons were identified during the Dublin procedure as actual or potential victims of human trafficking and transfer was waived by exercising the sovereignty clause (under Article 3 or Article 15 Dublin II Regulation¹⁷). However, in the past there have been a few individual instances tied to the trafficking of prostitutes (mostly from sub-Saharan Africa) where authorities launched an investigation based on the statements of the persons in question given during their Dublin procedure; however, they could not be transferred because the transfer period (usually six months once the other Member State agrees, Article 19, Subs. 3 Dublin II Regulation) under the Dublin II Regulation had elapsed during the course of the investigation. Transfers as part of the Dublin procedure are usually not conducted during an on-going criminal investigation, so this may result in the time limit expiring. Once the transfer period elapses, the Federal Republic of Germany becomes responsible for reviewing the asylum procedure.

15 Victims of human trafficking with public healthcare insurance who got injured in an accident at work or who suffer from an occupational disease are also entitled to compensations covered by the statutory accident insurance (see KOK 2011: 245–258; KOK 2013c). Proprietary claims for compensation (i.e. for pain/injuries, psychological derogation, sequelae, or permanent physical injuries) can be enforced through the adhesive procedure (see KOK 2006: 23–25).

16 For more information on the Dublin procedure, see: <http://www.bamf.de/EN/Migration/AsylFluechtlinge/Asylverfahren/Dublinverfahren/dublinverfahren-node.html>.

17 Council Regulation (EC) No. 343/2003 of 18 February 2003 on establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

As known from press releases instances of human trafficking are frequently detected during raids on brothels (Die Welt 2010; Der Tagesspiegel 2012; Neue Zürcher Zeitung 2012). According to the BAMF's knowledge, these were usually instances in which the persons in question did not file a request for asylum.

3.5 Planned Measures

During 2013, the BAMF plans to revise its standing instructions on the asylum procedure, including a comprehensive definition of human trafficking and a list of indicators in accordance with the requirements of EU Directive 2011/36/EU. Furthermore, the standing instructions set forth the decision-making process for suspected cases of human trafficking. If human trafficking is suspected, case officers are thus required to refer to the special case officers for victims of human trafficking, who then inform the Security Department at BAMF headquarters. Police authorities are then contacted from here, if necessary.

4 Detection, Identification and Referral of Victims in Case of Forced Return

In the area of forced return, the German Residence Act (Sections 15, 57, 58 AufenthG) differentiates between refusal of entry, removal and deportation (Kreienbrink 2007: 43; Schneider/Kreienbrink 2010: 19). The Federal Police and the foreigners authorities are responsible for enforcing forced return (Section 71 AufenthG). The measures these authorities use to identify victims of human trafficking are described below.

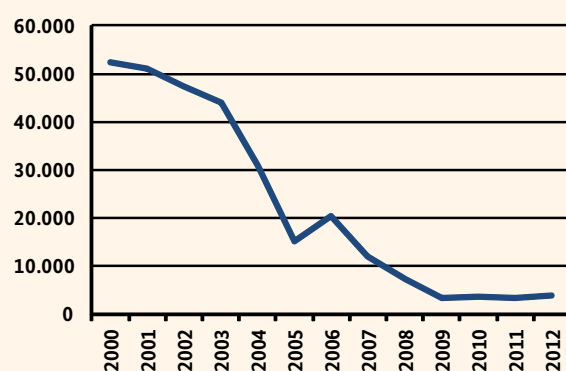
4.1 Refusal of entry

Foreigners who wish to enter Germany without permission are refused entry at the border (Section 15, Subs.1 AufenthG). Under Section 15, Subs. 2 AufenthG, the foreigner can be refused entry at the border if there are grounds for expulsion or if a reasonable suspicion prevails that residence is not for the purposes stated. Refusal of entry is also permitted if the requirements for entering the territory of the parties of the Schengen Agreement are not met. Typically, those refused entry are immediately returned to the border (15.04 AVwV-AufenthG).

The number of annual refusals has dropped dramatically from 2000 to 2005, from 52,257 to 15,043. After refusals once more exceeded the mark of 20,000 in 2006, the number has been at less than 4,000 per year for the last four years.¹⁸

¹⁸ The fall in annual refusals can be traced back to the Schengen Implementation Agreement, according to which Germany no longer controls its outside borders at frontier-crossing points. The last border controls at the borders to Switzerland were abolished on 12 December 2008.

Figure 1: Refusals of entry under Section 15, AufenthG (2000 to 2012)



Prior to the enactment of the Immigration Act on 1 January 2005, the numbers in Figure 1 referred to Section 60 Act on the Entry and Residence of Foreigners in the Federal Territory (AusIG).

Source: Federal Police

The Federal Police are responsible for refusing entry. However, according to the Federal Police, instances of refusal of entry are not specially reviewed for suspected human trafficking. Rather than undertaking special cross-checks for human trafficking, victims of human trafficking must reveal themselves as such. In this event, the Federal Police refers the victim to the respective state criminal police or the Federal Criminal Police Office, since they have no jurisdiction in this field under Section 12 Federal Police Act.¹⁹

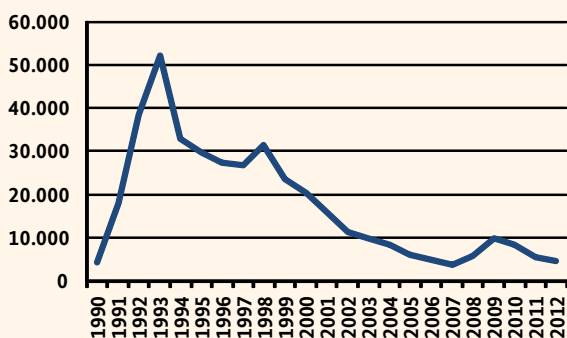
¹⁹ Federal Police Act of 19 October 1994 (BGBl. I S. 2978, 2979) last amended by Article 4 on 20 June 2013 (BGBl. I S. 1602).

4.2 Removal

Removal under Section 57 AufenthG is a residence-terminating measure that is generally preferred to deportation. A removal requires that entry was made illegally under Section 14 AufenthG. The period for removal is six months after which only deportation is possible (57.1.4.1 AVwV-AufenthG).

According to the Federal Police, the number of removals has fallen sharply compared to the high figures in the 1990s. In 1993, there were 52,279 removals recorded, whereas in 2012, only 4,417 irregular third-country nationals were removed. As with refusing entry, the Federal Police only have authority to detain a person in the event of a removal. This means that if third-country nationals that are being removed state that they are victims of human trafficking, the Federal Police refer these cases to the respective state criminal police or the Federal Criminal Police Office (BKA).

Figure 2: Removals under Section 57 AufenthG (1990 to 2012)



Prior to the enactment of the Immigration Act on 1 January 2005, the numbers in Figure 2 referred to Section 60 Foreigners Act.

Source: BMI/BAMF 2013: 241;
Deutscher Bundestag 2013c: 11, 16, 18

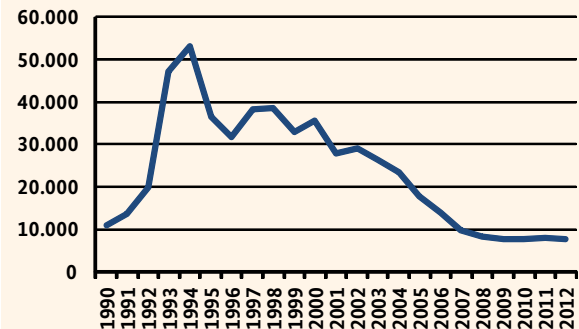
4.3 Deportation

The instrument of deportation is resorted to in the Federal Republic when, under Section 58 AufenthG, a foreigner fails to fulfil an existing obligation to depart. This means that deportation can only occur in instances where the obligation to depart is 'enforceable', i.e., can no longer be disputed by legal means. Deportation orders are typically in writing, and include both the time the foreigner with an enforceable obligation to depart has to voluntarily depart – between 7 and 30

days – and the destination country of deportation (cf. Section 59, Subs. 1 and 2 AufenthG).²⁰

Since peaking in the 1990s, the number of deportations in Germany has fallen sharply. A total of 53,043 deportations were enforced in 1994, whereas only 7,651 were enforced in 2012 – for a drop of 85.6%.

Figure 3: Deportations under Section 58 AufenthG (1990 to 2012)



Prior to the enactment of the Immigration Act on 1 January 2005, the numbers in Figure 3 referred to Section 50 Foreigners Act.

Source: BMI/BAMF 2013: 153;
Deutscher Bundestag 2013c: 11, 16, 18, 25

The foreigners authorities are responsible for ordering and conducting deportations; as part of the asylum procedure, the BAMF can issue a written deportation order under Sections 34 ff. AsylVfG. There are approx. 600 foreigners authorities across Germany. This high number means that each authority is only involved in the corresponding return measures to a marginal extent each year. This impression was confirmed in interviews with employees from various ABHs. During these sporadic deportation procedures, the foreigners authorities do not separately review cases for human trafficking. Rather, the legal decisions by the Federal Office for Migration and Refugees on the fulfilment of the requirements under Section 60, Subs. 2 to 5 or Subs. 7 AufenthG are binding for the ABH (cf. Section 42, Subs. 1 AsylVfG).

In addition to the decisions from the BAMF on deportation that are referred to the ABHs, irregular third-country nationals are also detained by the police and

²⁰ On the question of issuing a deportation order as part of the asylum procedure, see Sections 34 ff. AsylVfG.

customs authorities and turned over to the foreigners authorities. In these instances, some ABHs conduct an entry interview during first contact in which aspects such as travel route and conditions, type of accommodation in Germany, and any employment in the Federal Republic are enquired. Employees of the foreigners authorities are also becoming increasingly mindful of the suspicion of human trafficking during the entry interview and hearing; however, investigating the suspicion of human trafficking remains the duty of the police.

While determining the period for departure, as Section 59, Subs. 7, Sentence 4 AVwV-AufenthG states, foreigners authorities need to inform any person concerned about the legal provisions, programmes, and instruments available for victims of human trafficking in Germany. The information comprises details on the assistance and support of the special counselling centres, the possibility of launching a witness-protection programme, the possibility of issuing a residence permit under Section 25, Subs. 4a AufenthG as well as the possibility to access to the labour market, monthly subsidies to cover living expenses, and medical care (see 50.2a 4 AVwV-AufenthG).

In these instances, ABH employees offer to contact the local authorities on behalf of the victim. However, experience shows that potential victims only rarely go to the police – out of fear and scepticism against government authorities. If the victims are unwilling to cooperate with law enforcement, they are asked to leave the Federal Republic. In addition to the police, counselling centres for victims of human trafficking are important contacts for ABH employees. Their social workers have better access to the victims than government employees and can thereby make a substantial contribution to identifying victims and preparing criminal proceedings (see Ch. 5.3).

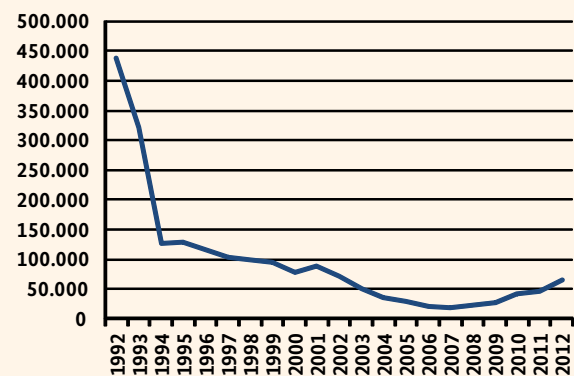
5 Detection and Identification of Victims of Human Trafficking by Others Involved

5.1 Reception Centres

Under the Asylum Procedure Act, foreigners who have filed an application for asylum at a BAMF branch office are required to live in the respective initial reception centre for up to six weeks, and at most for three months (Section 47, Subs. 1 AsylVfG). The Federal States are responsible for establishing and maintaining these reception centres (Müller 2013: 10). Actually, initial applicants are required to undergo an official medical examination in order to rule out contagious diseases and file their application for asylum before being transferred to community housing. The number of asylum applicants in Germany has once again increased massively in recent years, from a low of 19,164 initial applicants in 2007 to 64,540 in 2012. This is an increase of approx. 237%. In the first half of 2013, a total of 43,016 persons filed an application for asylum in Germany for the first time. Compared to the same period during the previous year, this is an increase of 19,950 persons, or 86.5% (BMI 2013). Accordingly, initial reception centres are being confronted with ever-increasing influxes. In order to have room for newcomers, transfer into community housing, in reality, occurs after only a few weeks. Due to the short stays at initial reception centres, systematic measures to identify victims of human trafficking cannot be conducted. However, employees of various initial reception centres state that on-site counselling staff regularly provide information on the issue of human trafficking and invite asylum seekers to discussion groups (see Ch. 5.3). In its response to an interpellation by the BÜNDNIS 90/DIE GRÜNEN faction, the Federal Government explained that, while indications of the need for special protection of asylum seekers should be checked at every stage of the asylum procedure, there is no systematic identification procedure (Deutscher Bundestag 2008a: 5). It can thus be assumed that for employees of reception centres a systematic search

for suspected cases of human trafficking in the face of the latest increase in asylum applicants is not possible either.

Figure 4: Asylum application numbers (1992 to 2012)



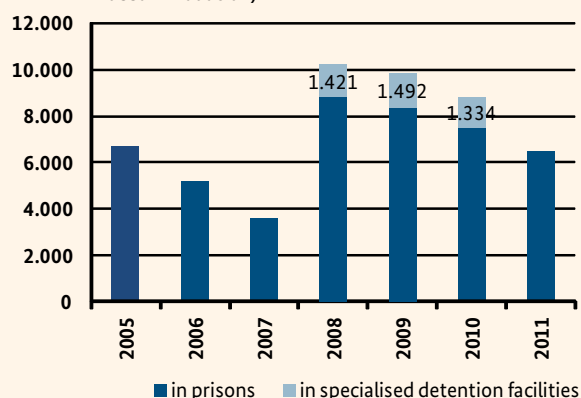
Source: BMI/BAMF 2013: 86

5.2 Detention Facilities

Under Section 62, Subs. 1, Sentence 1 AufenthG, foreigners may only be placed into custody pending deportation when the purpose of such detention cannot be fulfilled by other, less extreme means that are also sufficient. This is the case when there cannot be an immediate decision made regarding removal and deportation would be considerably hindered or even thwarted without detention (Section 62, Subs. 2, Sentence 1 AufenthG). Section 62, Subs. 3 AufenthG lists the following reasons in addition to the one above: a foreigner must be taken into custody when she has an enforceable obligation to depart on grounds of illegal entry, or her departure period has elapsed and she has changed her location of residence without notifying the ABH. Furthermore, detention pending deportation is also permitted in instances where the person

in question fails to appear at scheduled appointments with the ABH, has otherwise absconded from deportation, or there is reasonable reason to believe she will abscond from deportation. Each placement into custody pending deportation must be approved by court order. Generally, the duration of detention must be kept as brief as possible. Minors and families should only be placed into custody in very exceptional cases in the interest of the well-being of the child or children. Generally, special detention facilities should be used for detention pending deportation (Section 62a, Subs. 1, Sentence 1 AufenthG). Since not every Federal State has such facilities, detention pending deportation may be approved for other types of detention facilities. However, detainees facing deportation must then be kept separate from those imprisoned for crimes (Section 62a, Subs. 1, Sentence 2 AufenthG). Figure 5 shows that only about 15% of detainees facing deportation are kept in special facilities. The others are kept in prisons (JVs).

Figure 5: Detainees facing deportation (2008 to 2011, by accommodation)



Data for the Federal States of Bavaria and Hesse were not recorded from 2005 to 2008. As of 30 June 2011, a total of 108 persons in custody pending deportation were in special detention facilities.

Source: Deutscher Bundestag 2008b; 2011; 2012b

With regard to support while in custody pending deportation, a current study (PRO ASYL/Diakonisches Werk in Hesse and Nassau 2013) shows that, in the thirteen detention centres surveyed, social support and counselling as well as legal counselling, is insufficiently provided. Social services should actually be the first contact for detainees facing deportation and provide information on residence, asylum, and detention issues. It is necessary for the employees to have sufficient language skills or access to interpreters; however this is only the case in a small number of instances.

The cause appears to be insufficient funding for the detention facilities. Employees of social services were only found in nine of the facilities surveyed – some of them only part-time, with two employees per facility in only one instance (PRO ASYL/Diakonie 2013: 21-23). Another study on detention pending deportation in Munich and Berlin shows that detainees facing deportation stated they felt the reason for detention was not sufficiently explained. In the majority of instances, legal counselling was only provided by non-governmental organisations (NGOs). Even in terms of medical and psychological care required to treat trauma, the study points to inadequacies when in custody pending deportation. Medical staff lacks the appropriate language skills (often they can only speak German) and interpreters are not sufficiently provided (Jesuit Refugee Service-Europe 2010: 193 and 196).

Interviews with employees of detention facilities, ABHs, and counselling centres conducted during this study reveal that the employees of detention facilities are rarely successful in building trust and encouraging detainees to open up due to the large number of detainees that must be supervised. However, Section 62a, Subs. 2 AufenthG sets forth that detainees facing deportation have the right to contact legal counsel, family members, and the respective consular authorities. Furthermore, social workers working with assistance and support organisations should be allowed to visit detainees facing deportation upon the detainees' request (Section 62a, Subs. 4 AufenthG). The work done by counselling centres in reception centres and in detention facilities is described in the next section.

5.2 Counselling Centres

Counselling centres often lead the way in identifying victims of human trafficking in reception centres and detention facilities. They normally have closer contact to victims than employees of public facilities. The reasons for this are strain on the facilities, the disparity between the supervisors and the supervised, and victims' distrust of government employees. Support and counselling for victims takes place either directly in their native language or is supported by interpreters.

Many counselling centres have visitor's passes to detention facilities, allowing them contact with victims. Social workers either receive information from the police on suspected cases of human trafficking, or were already providing support to the victim when the

victim was placed into custody. Furthermore, these organisations are allowed to display informational materials about the rights of victims of human trafficking and about the counselling centres in the recreation areas of detention facilities. These mini-leaflets come in various languages in order to reach the largest audience possible. However, there are indications that the counsellors receive very little support in their work from the detention facilities and are often the first and only ones 'who are interested in the (flight) history of the inmates, and their hardships and fears regarding their imminent deportation/refoulement, and take them seriously' (PRO ASYL/Diakonie 2013: 21). According to the Federal Government, only a few Federal States provide free legal consultation for detainees facing deportation: Baden-Württemberg, Brandenburg (one-time), and North Rhine-Westphalia. Hesse, Rhineland Palatinate, Saxony, and Schleswig-Holstein assume costs for legal counsel/legal information and advice. In the majority of instances, however, it is counselling centres, NGOs, and churches organisations that offer free legal counsel for detainees facing deportation (Deutscher Bundestag 2012a: 59-63). Nevertheless, counselling centre employees suggest that intensive conversations are required before providing legal advice in order to gain the trust of potential victims and prepare them for co-operating with law enforcement. Before criminal proceedings against the perpetrators officially begin, social workers often arrange for an informal conversation with the police in order to alleviate the victim's fear of the authorities (Jadwiga Fachberatungsstelle 2012a: 10; 2012b: 14; 2013).

In initial reception centres and community housing, social services and counselling centres provide general counselling on asylum as well as information and counselling regarding human trafficking. Asylum counselling is often supported by the Federal States' refugee councils. In Munich, the Munich Refugee Council and Amnesty International Munich have been running, for example, an 'Info Bus for Refugees' since 2001, providing weekly asylum counselling at initial reception centres. This also includes special appointments scheduled with women to broach the issue of human trafficking, among other topics (Münchner Flüchtlingsrat 2013). Since, according to Jadwiga Counselling Centre, a large number of young Ethiopians and Pakistanis who are victims of forced marriage are brought to the Initial Reception Centre in Zirndorf (near Nuremberg), Jadwiga has, with the support of the EU, opened a Women's Café there (Internationales

Frauencafé 2013). Social workers use this informal setting to provide information on human trafficking – specifically sexual exploitation and forced marriage. One problem brought up by counselling centres in relation to identifying victims of human trafficking in initial reception centres is the brief amount of time the social workers have. Once the asylum procedure has been opened, the asylum seekers are moved into community housing distributed across the state (Ch. 5.1). Due to the lack of personnel at the counselling centres, many of these housing facilities cannot be reached easily. Under these conditions, suspected cases sometimes cannot be pursued.

5.4 Evaluation of Identification Measures

During a symposium on human trafficking and asylum organised by the BAMF in 2011, representatives of Federal and State authorities, counselling centres, the public prosecutor's office, attorneys, and the police addressed – among other issues – the topic of dealing with victims of human trafficking in reception centres. In particular, it was suggested that individual process counselling was required at each initial reception centre. Staff with cross-cultural knowledge and expertise both in the country of origin as well as in social work are required in order to be able to identify victims of human trafficking. Only this way can a bond of trust be formed with the victims. Country-specific characteristics should also be taken into consideration in consultations on processes and relevance of the hearing. Since the German administrative apparatus is not always accessible to victims with regard to length and structure of the procedure, it is even more important to thoroughly explain procedures to victims of human trafficking. Victims should also be informed of how their testimony will be used. Under Section 25, Subs. 4a AufenthG, if victims explicitly refuse to testify during criminal proceedings, no such proceedings should be instituted. According to the police, accommodating victims of human trafficking in initial reception centres is insufficient. Police reports indicate that potential victims of human trafficking often disappear from initial reception centres after a few days. Since these facilities offer no special protection to victims of human trafficking against the influence of the perpetrators, human traffickers can house victims there for their own purposes and then pick them up again (BAMF 2011: 20–21).

6 Training

Education and training concept by Federal and State Task Force on Trafficking in Women

Since 1997, the Federal and State Task Force of Trafficking in Women, consisting of representatives from various Federal Ministries, minister conferences, the Federal Criminal Police Office, the KOK, the Federal Association of Charitable Associations, and SOLWODI e.V. (Solidarity with Women in Distress) have been helping in the fight against human trafficking in Germany. Training and awareness raising for all those who are involved in fighting human trafficking has always been a core element of the work of the Federal and State Task Force of Trafficking in Women. Thus, in 2007 the Federal and State Task Force adopted a 'Working Paper on the Standardisation of Training Concepts in the Area of Human Trafficking for Sexual Exploitation'. This working paper is frequently used to train practitioners and therefore founds the basis for the subsequent illustration.

One of the core tasks of the task force is analysing the need for education and training in all government agencies that deal directly with the crime of human trafficking. Jointly developed educational and training measures are geared towards the police, counselling centres, the public prosecutor's office, judges, judicial witness support, foreigners authorities, employment offices, social services, youth welfare, public health authorities, customs/financial control for unreported employment, and prisons. This training should at minimum be mandatory for all public employees. The content is expansive and should be tailored to each public authority's range of duties. For example, legal aspects should be taught with regard to criminal law and criminal proceedings law as well as social legislation and residence law. Training is also provided on the cultural aspects of victim and perpetrator profiles as well as on criminological insights into the disposition to violence of perpetrator networks and its effect on the victims. The training concept, which so far is limited to human trafficking for sexual exploitation, should be expanded to include human trafficking for labour exploitation following an appropriate evaluation

(BMFSFJ 2007b: 7–9). Additionally, the Federal and State Task Force considers general audience education measures between agencies that co-operate on a daily basis as essential for successfully combating human trafficking. Existing structures such as round-table discussions or forums should be used and talks/discussions of case studies should address co-operation issues. Lastly, the task force encourages the organisation of national workshops for counselling centres and investigative authorities, during which the duties of each agency are delineated and, at the same time, important interfaces are addressed (BMFSFJ 2007b: 20). In its statement on the Council of Europe Convention on 'Action against Trafficking in Human Beings', the KOK stressed that these very types of interdisciplinary training measures should be more systematically conducted in the future for employees of the respective authorities. Counselling groups must also be integrated into the training and appropriate financing must be secured (KOK 2012: 26).

Skill expansion training from BAMF, IOM and UNHCR

As part of the joint project carried out by the BAMF, IOM, and UNHCR, five two-day training sessions were conducted in 2012 for the case officers at the BAMF's 22 branch offices as well as for employees at its headquarters. A total of 30 employees participated in this one-time, mandatory training. In addition to instructors from the BAMF, IOM, and UNHCR, some of the training modules were led by experts from local counselling centres and police stations. The learning methods used in the twelve course units included presentations and illustrations through case studies, role playing, and film excerpts. The case officers who completed this training were then designated as special case officers for victims of human trafficking and serve as skill multipliers in the BAMF's branch offices. All the informational material used during the course of the training measures is provided in order to effect skill multiplication and a four-page aid was developed for case officers in order to facilitate the identification

of victims of human trafficking and the co-operation with counselling centres and the police. In this manner, all case officers received training in identifying and dealing with victims of human trafficking (IOM et al. 2012: 8–11).

Training began by addressing the human trafficking situation in Germany, as well as international and national legal instruments. In addition, counselling centres and the police were given the opportunity to present their work and mutual co-operation agreements. The good experiences in co-operation between these authorities should serve as a model for the expansion of the relationships between case officers and counselling centre workers. Another component of the training was the evaluation of the BAMF's specific decisions. Using various case studies, participants were educated on the granting of refugee protection for victims of human trafficking and introduced to general and country-specific indicators of human trafficking. Participants familiarised themselves with the definition of human trafficking, its various forms, and the types of deception, coercion, and exploitation. Another module focused on state obligations in dealing with human trafficking emanating from the European Convention on Human Rights and adjudication by the European Court of Human Rights. Another role play attempted to convey the challenges of a hearing with victims of human trafficking and corresponding recommendations for dealing with victims were developed (IOM et al. 2012: 94–95).

Courses by the Federal Criminal Police Office

The Federal Criminal Police Office offers a course on human trafficking for sexual exploitation twice per year and on human trafficking for labour exploitation once per year. The audience of the first course is police officers whose primary duties include the specialised investigation and closing of cases related to human trafficking for sexual exploitation and who already have broad experience in this area.

The course addresses the following topics:

- National human trafficking situation assessment (current changes, phenomena, new modi operandi)
- Current as well as planned and possible developments in legislation

- Current legal practice regarding international police and judicial co-operation
- Current focal points of co-operation using possible changes in situations
- Role and significance of Europol and Eurojust
- Cross-cultural skills based on current situational emphases.

Participants should be able to use legal, tactical, and technical skills to recognise and assess crime in the area of human trafficking. The course contents are conveyed using introductory presentations on each topic and then reinforced through discussions. The course on human trafficking for labour exploitation is geared toward officials who are or will be used to combat this crime.

The course contains the following contents:

- Phenomenology and situational overview, including situational knowledge from the areas of smuggling, organised crime, and human trafficking for sexual exploitation
- Legal foundations (exploration of difficult classification issues using practical instances)
- Foundations based on immigration law (Immigration Act) and legal provisions on work permits, obligation to contribute to social insurance, employment contract processes
- Introduction to financial control for unreported employment and discussion of co-operation options with the police (case analysis)
- Findings from victim protection organisations, NGOs, ILO, IOM, and the Migrant Trade Union
- Cross-cultural communication.

This should give participants a special knowledge base of law, criminology, crime, and tactics for combating human trafficking for labour exploitation and the ability to utilise it in the field. They should also be able to determine problem areas and recognise international relationships.

KOK training

The German NGO network against trafficking in women and violence against migrant women e.V. hosts an annual networking event for its members to which experts from other countries are also invited. In addition to drafting joint position papers on political strategies and the legal situation, the event primarily serves as a knowledge exchange between member organisations regarding successful prevention methods and procedures in the practice of working with victims. The KOK also organises internal training measures for each of the counselling centres (KOK 2010: § 2; 2013b). As part of the Federal States' committees and round-table discussions, these counselling centres are also involved in education and training measures. The KOK conceptualises appropriate training formats as needed and at the request of authorities such as the police and the public prosecutor's office, and also conducts them. In recent years, the KOK developed and organised joint workshops with the Federal Police Office; i.e. on issues such as 'Improving the Co-operation between NGOs and the Police'. In order to establish a joint understanding for the respective responsibilities and potential issues of the two organisations, during the workshops mental role plays were conducted, best- and worst-case co-operation scenarios imagined, and common targets for the future co-operation developed.

Regional training series by the German Institute for Human Rights

The German Institute for Human Rights hosted a regional training series in 2012/2013 along with the Federal Consortium of Charitable Organisations on the topic 'Labour Exploitation and Human Trafficking: Options for Migration and Refugee Counselling'. A total of five sessions were offered to migration and refugee counsellors. The training addressed the topics of labour exploitation and human trafficking, focusing on their forms and sectors as well as the rights of victims. Counselling centres also discussed action

options, primarily with regard to asserting the labour rights of victims of human trafficking (Deutsches Institut für Menschenrechte 2013b). Training participants received a handout addressing the forms of human trafficking for labour exploitation as well as many other items such as workers' rights, the process for asserting rights, and a wage entitlement checklist. This handout was also made available to other interested parties on the website of the German Institute for Human Rights (see Deutsches Institut für Menschenrechte 2012).

Additional information

So far there has been no special training on human trafficking for employees of ABHs, initial reception centres, and detention facilities.

7 Statistics

In addition to the analysis of hearing minutes in order to evaluate identified victims of human trafficking that the BAMF had commissioned in 2011 and was discussed in Chapter 3.2, there are no other known studies that statistically substantiate the extent of identified victims in the asylum process and in the event of forced return. Therefore, only the BKA's assessment of national human trafficking situations and statistics of the BAMF regarding Section 25, Subs. 4a AufenthG (residence on humanitarian grounds) will be used below to provide a statistical overview of the phenomenon of human trafficking in Germany.

7.1 BKA's National Human Trafficking Situation Assessment

Every year since 1999, the BKA has published its national situation assessment, which provides a statistical overview of human trafficking for sexual and

labour exploitation. The assessments from previous years show no major changes in human trafficking for sexual exploitation, both in the number of closed cases and in the number of victims. The current national situation assessment shows that 482 such criminal proceedings were closed in 2011, while 534 were closed in 2009. The figures for the last five years show an average of approx. 484.4 closed criminal proceedings per year (BKA 2012: 5).

The number of persons who have fallen victim to human trafficking for sexual exploitation has also not changed significantly in recent years. The figures in 2009 reached a high of 710 victims, then fell the next year by approx. 14 %. The BKA recorded 640 victims of human trafficking for sexual exploitation in 2011. Between 2007 and 2011, an average of 665 victims were identified nationwide (BKA 2009: 8; 2010: 8; 2012: 9).

Figure 6: Criminal proceedings: human trafficking for sexual exploitation (2007 to 2011)

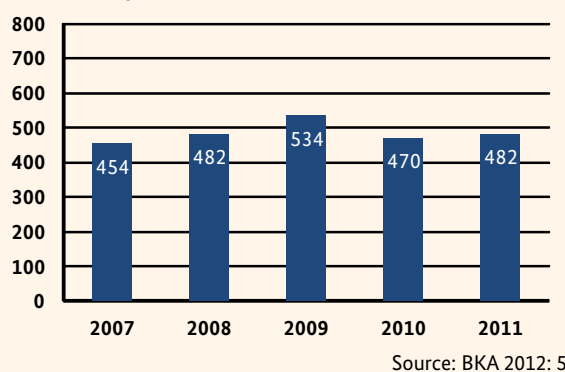


Figure 7: Victims of human trafficking for sexual exploitation (2007 to 2011)

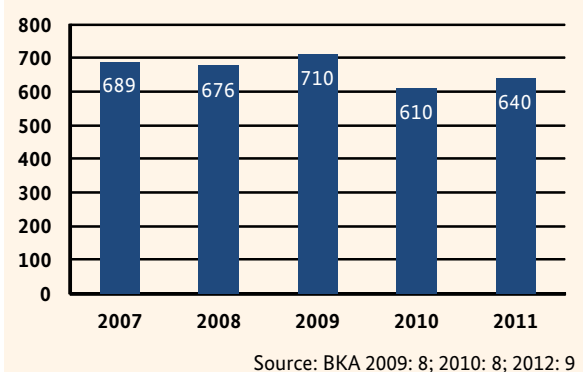
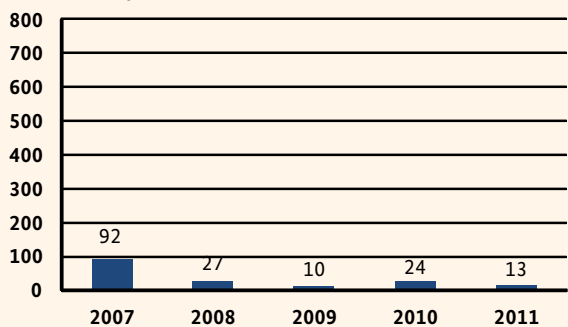


Figure 8: Criminal proceedings: human trafficking for labour exploitation (2007 to 2011)

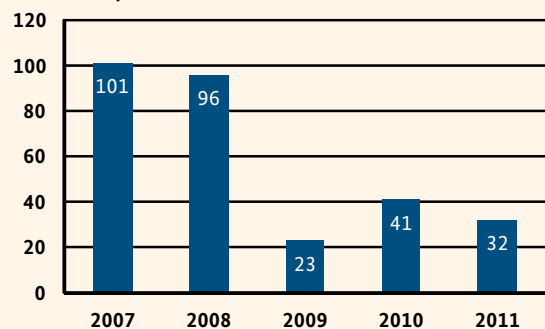


Source: BKA 2009: 11; 2010: 11; 2012: 13

Regarding human trafficking for labour exploitation, the BKA points out that this crime is very difficult to uncover and cases are often never or only incidentally discovered, for example through social or residential counselling or during official checks. In fact, the public perceives victims of this form of human trafficking as illegal aliens or undocumented workers (BKA 2013: 8). In order to criminally prosecute human trafficking for labour exploitation, the perpetrators must take advantage of a dilemma by drastically limiting options regarding decisions and actions (Section 233, Subs. 1 StGB). The BKA explains that it is this degree of unlawfulness on the part of the victims that is difficult to prove. Other relevant legal provisions make a conviction not dependent upon a subjective injustice experience that can only be proved through a personal testimony and are therefore somewhat easier to prove. The statistics on closed criminal proceedings confirm this relationship: only a few series of criminal proceedings are uncovered each year. In 2007, there were 92 criminal proceedings of human trafficking for labour exploitation closed, whereas only about 19 proceedings were closed on average every year for the previous four years (BKA 2009: 11; 2010: 11; 2012: 13)

The number of persons identified as victims of human trafficking whose labour was exploited has also clearly fallen in the last five years. An important reason for that is the difficulty of proving the crime under Section 233 StGB as well as lacking support structures and co-operation structures in the Federal States (see KOK 2011). Only around 99 victims were identified in 2007

Figure 9: Number of victims of human trafficking for labour exploitation (2007 to 2011)



Source: BKA 2009: 11; 2011: 14; 2012: 13

and 2008 nationwide. From 2009 to 2011, however, 32 victims were identified each year on average (BKA 2009: 11; 2011: 14; 2012: 13).

The Federal Criminal Police Office nevertheless assume a vastly greater number of unreported cases of human trafficking both for sexual exploitation and labour exploitation. The special counselling centres for victims of human trafficking report that not all of the persons concerned that appeal to their social workers and receive assistance from the centres also contact the Police or file a criminal complaint. Furthermore, it is assumed that many of the victims of human trafficking remain unidentified.

7.2 Data Collection by BAMF for Section 25 Subs. 4a AufenthG

The Central Register of Foreigners (AZR) contains the number of persons who have received a residence title on humanitarian grounds under Section 25, Subs. 4a AufenthG. Statistics show a clear increase in this number, with 74 persons in 2012 versus the 23 persons in 2008 who received a residence title because they were victims of human trafficking. This is an increase of approx. 222%. Statistics also show that the majority of residence titles are issued to female victims. Over the last five years, the average percentage of women to residence titles issued under Section 25, Subs. 4a AufenthG corresponded to over 50 persons per year.

The distribution of residence titles by age shows that the majority of recipients is between 18 and 35. The annual average of minors who received this kind of residence title was only four.

With regard to the origin of persons who have received a residence title under Section 25, Subs. 4a AufenthG,

Nigerians make up the largest group of third-country nationals who have received a residence title on humanitarian grounds. Over the last five years, a total of 60 Nigerians received this kind of residence title, followed by nationals from the Russian Federation (18), the Ukraine (6), and India (6).

Table 1: Number of persons who received a residence title under Section 25, Subs. 4a AufenthG (2008 to 2012, by gender and age)

	As of 31 Dec 08	As of 31 Dec 09	As of 31 Dec 10	As of 31 Dec 11	As of 31 Dec 12
Total	23	51	64	67	74
Females	22	45	61	61	63
Males	1	6	3	6	11
1-17 years	n/a	n/a	4	3	5
18-25 years	n/a	n/a	31	35	27
26-35 years	n/a	n/a	23	23	29
36-45 years	n/a	n/a	4	3	10
Over 45 years	n/a	n/a	2	3	3

The age of persons who received a residence title under Section 25, Subs. 4a AufenthG could not be broken down from the AZR for the years 2008 and 2009.

Source: AZR

Table 2: Number of persons who received a residence title under Section 25, Subs. 4a AufenthG (2008 to 2012, by origin)

Nationality	As of 31 Dec 08	As of 31 Dec 09	As of 31 Dec 10	As of 31 Dec 11	As of 31 Dec 12
Total	23	51	64	67	74
Albania		1	3	1	1
Brazil					3
Bulgaria	6	14	15	16	17
China		1	2		1
India	1	2	1	1	1
Iran, Islamic Republic of					1
Cameroon			1	1	
Kenya				3	1
Korea (Republic of)	1		1	1	1
Kosovo		1		1	1
Croatia					1
Liberia		1	1	1	
Libya					1
Lithuania		1			
Morocco			1	1	1
Moldova (Republic of)			1	1	
Nigeria	5	9	11	16	19
Pakistan		2	1	1	1
Poland	2	5	4	3	3
Romania	3	3	7	8	8
Russian Federation	3	6	6	2	1
Serbia (formerly)			1		
Sierra Leone		1	1		
Slovakian Republic		1	1	1	1
Other African nationalities		1	1	1	
Sudan		1			
Sudan (formerly)			1	1	1
Thailand					1
Czech Republic				1	1
Tunisia					1
Uganda		1			
Ukraine	1		2	2	1
Hungary			2	3	3
Uzbekistan					1
Venezuela				1	1
United States of America					1
Belarus	1				

EU citizens who are not eligible for freedom of movement, that is those who do not work in Germany and do not have adequate financial means, can also be issued with a residence permit under Section 25, Subs. 4a AufenthG.

Source: AZR

8 Conclusion

Identifying victims of human trafficking is a complex issue in which an array of public and private actors are involved. In the asylum procedure, it is the task of the case officer to watch for indications of human trafficking during the hearing. In the event of forced return, the Federal Police and foreigners authority staff are responsible for identifying victims. Social workers from counselling centres provide significant support to government agencies.

The Federal Republic guarantees broad protection and support to victims of human trafficking. Victims first have the opportunity to elude the perpetrators and recover from their sexual or labour exploitation during the reflection and stabilisation period (Section 59, Subs. 7 AufenthG). If the victims decide to testify against the perpetrators in court, they receive a residence title for the duration of the proceedings (Section 25, Subs. 4a AufenthG). Residence law also offers the option of subsidiary protection under Section 60, Subs. 2 AufenthG, provided there is a tangible risk that the foreigner will be subject to torture or inhumane or degrading treatment or punishment upon return. If the relevant requirements are met, further forms of humanitarian protection (i.e. under Section 25, Subs. 3 in conjunction with Section 60 Subs. 7 AufenthG or under Section 25 Subs. 5 AufenthG) can apply. Victims are also entitled to benefits under the Asylum Seekers' Benefits Act and can also receive compensation under the Victim Compensation Act, the statutory accident insurance, and through the adhesive procedure.

Measures for identifying victims of human trafficking

A number of measures have been developed and implemented in recent years to help better identify victims of human trafficking.

These include the 'Identification and Protection of Victims of Human Trafficking in the Asylum System' project that the BAMF designed and conducted together with IOM and UNHCR. The goal of the project

was to increase case officers' awareness of human trafficking. Handouts were developed containing a definition and indicators of human trafficking as well as instructions on how to proceed. Special case officers for victims of human trafficking were also trained and deployed in all BAMF field offices and could disseminate the contents of the training to their colleagues. Standing instructions are being developed in order to institutionalise the identification of victims of human trafficking in administrative practice.

Furthermore, the urgency of intensive co-operation of the respective actors in the area of human trafficking was recognised in the past and appropriate training and co-operation agreements were designed. With the overall goal of combating human trafficking, the Federal and State Task Force on Trafficking in Women recommended, for example, joint education and training for the police, counselling centres, the public prosecutor's office, judges, judicial witness support, foreigners authorities, employment offices, social services, youth welfare, public health authorities, customs/financial control for unreported employment, and prisons to increase mutual understanding between the individual actors for each area of responsibility and produce synergy. Since 1999, the police and counselling centres in the Federal Republic have also had a co-operation concept that highlights each area of responsibility as well as points of contact for effective co-operation. The co-operation concept was updated in 2007. At the local level, many places established round-table discussions as a platform for employees from various institutions and counselling centres where current suspected cases and tangible problems can be discussed.

Statistical findings

The BKA's national human trafficking situation assessment is decisive for statistically evaluating the phenomenon of human trafficking in Germany. It is clear that, by far, more cases of human trafficking for sexual exploitation are closed each year amongst others due to the fact that human trafficking for labour

exploitation is difficult to prove. Analogously, the number of identified victims in the sexual exploitation area is significantly higher than in the area of labour exploitation.

The statistics on residence titles under Section 25, Subs. 4a AufenthG show that the number of issued residence titles has increased steadily in past years but overall remains at a low level. This could imply that victim identification has become more effective. The majority of victims in the reference period between 2008 and 2012 were women. Most identified third-country nationals came from Nigeria, the Russian Federation, the Ukraine, and India.

Challenges and obstacles

The greatest challenge in identifying victims of human trafficking is that the authorities depend on the victims' statement. Many victims remain ignorant of their legal options or are prevented by their sense of shame or trauma from talking about their exploitation. Personnel with cross-cultural knowledge and expertise both in the country of origin as well as in social work are required in order to be able to identify victims of human trafficking. However, victims often are afraid of opening up to authorities. This is caused by bad experiences with government authorities in other countries and administrative mechanisms that are not always accessible to victims.

Regarding reception centres and detention facilities, personnel shortages are another obstacle in identifying victims of human trafficking. Social support and legal counselling cannot always be sufficiently provided and sometimes there is a lack of appropriate foreign language knowledge or interpreters. Therefore, it is often counselling centre employees and not social services that are the first contact for victims. In reception centres in particular, the working conditions of social workers are complicated by the brief stays in the initial reception centres and the subsequent state-wide distribution of asylum applicants to community housing. Many of these facilities are difficult to reach, making intensive and continuous support not always possible. Another problem pertains to the insufficient security at some reception centres. Victims of human trafficking should ideally be placed in special accommodations where they can be removed from the

perpetrator's influence. However, this is not always possible due to limited resources.

The personnel at agencies involved with identification should receive more training on the characteristics of human trafficking in the future. The training concepts developed by the Federal and State Task Force on Trafficking in Women can serve as a model. Additionally, counselling centres should be included early on in identifying and supporting victims. In order to facilitate the access to information and support, co-operation concepts could be developed similar to the co-operation the centres have with the police that defines the responsibilities of each participant and points to possible synergistic effects.

The German NGO network against trafficking in women and violence against migrant women e.V. also points out the difficulties that occur in subsidising benefits under the Asylum Seekers' Benefits Act. It is difficult to find the appropriate physicians for treatment and to get urgently needed treatment approved. It is also criticised that training and integration measures cannot be subsidised by the AsylbLG. The conditions for subsidising medical and therapeutic treatment for victims should be revised, since intensive treatment and support is often required in order for victims to open up to authorities.

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Abbreviations

ABH	Foreigners Authority
AVwV-AufenthG	General Administrative Regulations to the Residence Act
AsylbLG	Asylum Seekers' Benefit Act
AsylVfG	Asylum Procedure Act
AufenthG	Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory
AuslG	Act on the Entry and Residence of Foreigners in the Federal Territory
AZR	Central Register of Foreigners
BAMF	Federal Office for Migration and Refugees
BGB	German Civil Code
BKA	Federal Criminal Police Office
BMFSFJ	Federal Ministry for Family, Seniors, Women and Youth
BMI	Federal Ministry of the Interior
BSchV	Regulation on Authorising new Foreigners to pursue Employment
BVerfG	Federal Constitutional Court
CDU/CSU	Christian Democratic Union/Christian Social Union
Dublin-VO	Dublin Regulation
EU	European Union
FDP	Free Democratic Party
ILO	International Labour Organization
IOM	International Organization for Migration
JVA	Prison

KOK	German NGO network against trafficking in women and violence against migrant women e.V.
KOM	European Commission
OEG	Victim Compensation Act
SGB	Social Security Code
StGB	German Penal Code
UNHCR	United Nations High Commissioner for Refugees
VG	Administrative court
VwVfG	Administrative Procedure Act

List of figures

Figure 1: Refusals of entry under Section 15, AufenthG (2000 to 2012)	22
Figure 2: Removals under Section 57 AufenthG (1990 to 2012)	23
Figure 3: Deportations under Section 58 AufenthG (1990 to 2012)	23
Figure 4: Asylum application numbers (1992 to 2012)	25
Figure 5: Detainees facing deportation (2008 to 2011, by accommodation)	26
Figure 6: Criminal proceedings: human trafficking for sexual exploitation (2007 to 2011)	31
Figure 7: Victims of human trafficking for sexual exploitation (2007 to 2011)	31
Figure 8: Criminal proceedings: human trafficking for labour exploitation (2007 to 2011)	32
Figure 9: Number of victims of human trafficking for labour exploitation (2007 to 2011)	32

List of tables

Table 1: Number of persons who received a residence title under Section 25, Subs. 4a AufenthG (2008 to 2012, by gender and age)	33
Table 2: Number of persons who received a residence title under Section 25, Subs. 4a AufenthG (2008 to 2012, by origin)	34

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Inna Becher und
Christian Babka von Gostomski | | |

Imprint

Published by:

Federal Office for Migration and Refugees (BAMF)
German National EMN Contact Point
Frankenstraße 210
90461 Nuremberg

Overall responsibility:

Dr. Axel Kreienbrink (Migration Research)
Birgit Gößmann (National EMN Contact Point)

Source of supply:

Bundesamt für Migration und Flüchtlinge
Referat 220
Frankenstraße 210
90461 Nürnberg
www.bamf.de
E-Mail: info@bamf.de

Author:

Ulrike Hofmann

Date:

October 2013

Layout:

Gertraude Wichtrey

Picture credits:

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Suggested citation:

Hoffmann, Ulrike (2013): Identification of victims of trafficking in human beings in international protection and forced return procedures, Working Paper 56 of the Research Section of the Federal Office. Nuremberg: Federal Office for Migration and Refugees.

ISSN:

1865-4770 Printversion

ISSN:

1865-4967 Internetversion

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